HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 19314 of 1999

12-07-2006

Between:
S.Sree Rama Chandra Murthy, s/o Venkat3eswara Sharma, 35 years, Junior Assistant, ABM High School, Vinukonda, Guntur District.

..... PETITIONER

AND

1 The State of Andhra Pradesh rep. By its Secretary to Government, Education Department, Secretariat, Hyderabad and three others.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 19314 of 1999

O R D E R:

This writ petition has been filed by S.Rama Chandra Murthy assailing the proceedings No.4076/D1-2/97 dated 10-2-1998 issued by the 2nd respondent- Director of School Education, Andhra Pradesh, Hyderabad.

The case of the petitioner as disclosed in the affidavit filed in support of the writ petition in brief is:

The petitioner joined as Junior Assistant in an unaided post in the 4th respondent school-ABM High School as per the proceedings dated 06-01-1986. Subsequently, the said unaided post came to be created vide proceedings in L.Dis.No.33491/D1-E/91-(2) dated 31.8.1991 issued by the 2nd respondent-Director of School education. The petitioner submitted applications to create the unaided post of Junior Assistant in their institution with retrospective effect i.e.,
1986-87. Since his request was turned down by the authorities, he resorted to file this writ petition seeking the following relief:

> " to issue an order or direction, more in the nature of Writ of Mandamus, declaring the action of the 2nd respondent in issuing the Proceedings No.4076/D1-

1/97, dated 10-2-1998 in so far as not according the permission with retrospective effect as done in the case of similarly situated persons vide Proceedings L.Dis.No.1111/D1-1/92 dated 1-9-1993 issued by the 2nd respondent and Proceedings Rc.No.787/D1-2/95, dated 10-5-1996 of the Commissioner and Director of School Education as illegal and arbitrary."

The respondents 1 to 3 filed counter affidavit. One Sri B.Satyanarayana has sworn to the counter affidavit.

It is stated in the counter affidavit that the post itself was created by the 2nd respondent by proceedings dated 21-11-1992 with effect from the academic year 1992-93 and the same was required to be filled up following the procedure prescribed under the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules, 1988 G.O.Ms.No.524 dated 10.02.1988. It is further stated in the counter affidavit that since the petitioner was not recruited in accordance with the procedure, question of considering his request does not arise. The relevant portion of the para 2 of the counter affidavit is to be noted and it is thus:

" In reply to the averments made para 2 of the affidavit, I submit that the petitioner was appointed as Junior Assistant (un-Aided) on 6-1-86 by the then Correspondent Sri P.Jayachandra Rao. It is also relevant to submit that there is no unaided post of Junior Assistant in A.B.M. High School, Vinukonda. The post of Junior Asst. (Unaided) was created by the Director of School Education by proceedings L.Dis.No.3349/D1-2/91-(2) dt.21-11-92 with effect from 1992-93. The petitioner was paid by the Management

from its own funds. The petitioner was continued by the Management though there is no sanctioned post of Junior Asst.(Un-aided). I humbly submit that the post of Junior Asst.(Un-Aided) which was created by the Director of School Education in procs. Dt.21-11-92 with effect from 92-93 has to be filled up by following the procedure prescribed in Recruitment rules i.e. A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules, 1988 G.O.Ms.No.524 dt.20-12-88. The fourth respondent, however, continued the petitioner as Junior Asst. I humbly submit that the appointment of the petitioner is without there being any sanctioned post and continuing the petitioner after sanction of the post without following the procedure prescribed under the Recruitment rules is irregular and contrary to law. I submit that the Management was paying the petitioner from its own funds. The Management did not notify the said post as per the recruitment procedure. The appointment of the petitioner in unaided post of Jr.Asst. cannot be approved by the competent authority, as the entry of the petitioner is in a back door method."

Heard the learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner submits that the unaided post came to be created retrospectively in some other schools and therefore, not accepting the request of the petitioner to create unaided post with retrospective effect amounts to discrimination.

A fact remains that by the time the petitioner was appointed in the 4th respondent school, there was no post of Junior Assistant unaided. The said post came to be

created under proceedings dated 21-11-1992 with effect from the academic year 1992-93. By the time the petitioner was appointed there was no post at all. Therefore, question of granting post with retrospective effect does not arise. In the circumstances of the case, the relief sought for by the petitioner in this writ petition cannot be granted.

Accordingly, the writ petition is dismissed. No costs.

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12-07-2006

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